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Dan Bozin

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**DAN BOZIN, INDIVIDUALLY
AND ON BEHALF OF ALL
OTHERS SIMILARLY
SITUATED,**

PLAINTIFFS,

V.

CLIENT SERVICES, INC.,

DEFENDANT.

Case No.: _____

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C §
227 ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1. DAN BOZIN (“Plaintiff”); brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of CLIENT SERVICES, INC. (Defendant) and its related entities, subsidiaries and agents in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephones, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
2. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiffs. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that:

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy

invasion.

Id. at § 12; *see also*, *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on TCPA's purpose).

4. Congress also specifically found that "the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call..." *Id.* at §§ 12-13. *See also*, *Mims*, 132 S. Ct. at 744.
5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls to a non-debtor similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

6. The Ninth Circuit recently affirmed certification of a TCPA class action similar to this one in *Meyer v. Portfolio Recovery Associates, LLC*, __ F.3d __, 2012 WL 4840814 (9th Cir. Oct. 12, 2012).

JURISDICTION AND VENUE

7. This Court has federal question jurisdiction because this case arises out of violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).
8. Venue is proper in the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1391(b) and 1441(a) because Defendant

1 is subject to personal jurisdiction in the County of Los Angeles, State of
2 California as not only does Defendant regularly conduct business throughout
3 the State of California, but Plaintiffs reside within the County of Los
4 Angeles, State of California.

5 **PARTIES**

- 6 9. Plaintiff is, and at all times mentioned herein was, an individual citizen and
7 resident of the State of California.
- 8 10. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and
9 at all times mentioned herein was, a Corporation whose primary address is
10 211 North Third Street, St. Charles, Missouri, 63301. Defendant is, and at all
11 times mentioned herein was, a Corporation and a "person," as defined by 47
12 U.S.C. § 153 (39).
- 13 11. Defendant is a company that provides debt collection services.
- 14 12. Plaintiff is informed and believes, and thereon alleges, that at all times
15 relevant Defendant conducted business in the State of California and in the
16 County of Los Angeles.

17 **FACTUAL ALLEGATIONS**

- 18 13. Beginning in or around November of 2013, Defendant began to utilize
19 Plaintiffs' cellular telephone number, ending in -3605, to place virtually
20 daily incessant calls to Plaintiffs pertaining to an alleged debt owed to
21 another person unknown.
- 22 14. The calls from Defendant came from phone numbers including but not
23 limited to 800-521-3236.
- 24 15. During this time, Defendant placed calls on a daily basis, often placing
25 numerous calls a day.
- 26 16. Plaintiff has no relationship with Defendant.
- 27 17. Plaintiff answered the calls on occasion and tried to explain to Defendant
28 that they had the wrong phone number.

- 1 18. Regardless, of Plaintiff's notification, Defendant continued to call Plaintiff.
- 2 19. The calls Defendant placed to Plaintiffs' cellular telephone were placed via
- 3 an "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C.
- 4 § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A)
- 5 20. The ATDS used by Defendant has the capacity to store or produce telephone
- 6 numbers to be called, using a random or sequential number generator.
- 7 21. The telephone numbers Defendant called were assigned to a cellular
- 8 telephone service for which Plaintiff incurs a charge for incoming calls
- 9 pursuant to 47 U.S.C. § 227 (b)(1).
- 10 22. Plaintiff did not provide express consent to Defendant to receive calls on
- 11 Plaintiff's cellular telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).
- 12 23. Plaintiff did not provide "prior express consent" to Defendant to place
- 13 telephone calls to Plaintiff's cellular telephone with an artificial or
- 14 prerecorded voice utilizing an ATDS as proscribed under 47 U.S.C. §
- 15 227(b)(1)(A).
- 16 24. These telephone calls by Defendant or its agents were in violation of 47
- 17 U.S.C. § 227(b)(1).

18 CLASS ACTION ALLEGATIONS

- 19 25. Plaintiff brings this action on behalf of himself and on behalf of all others
- 20 similarly situated ("the Class").
- 21 26. Plaintiff represents, and is a member of, the Class, consisting of:
- 22 All persons within the United States who received any
- 23 telephone call/s from Defendant or their agent/s and/or
- 24 employee/s to said person's cellular telephone made
- 25 through the use of any automatic telephone dialing
- 26 system or with an artificial or prerecorded voice within
- the four years prior to the filing of the Complaint.
- 27 27. Defendant and its employees or agents are excluded from the Class.
- 28 Plaintiff does not know the number of members in the Class, but believe the

1 Class members number in the tens of thousands, if not more. Thus, this
2 matter should be certified as a Class action to assist in the expeditious
3 litigation of this matter.

4 28. Plaintiff and members of the Class were harmed by the acts of Defendant in
5 at least the following ways: Defendant illegally contacted Plaintiff and the
6 Class members via their cellular telephones thereby causing Plaintiff and the
7 Class members to incur certain cellular telephone charges or reduce cellular
8 telephone time for which Plaintiff and the Class members previously paid,
9 by having to retrieve or administer messages left by Defendant during those
10 illegal calls, and invading the privacy of said Plaintiff and the Class
11 members. Plaintiff and the Class members were damaged thereby.

12 29. This suit seeks only damages and injunctive relief for recovery of economic
13 injury on behalf of the Class and it expressly is not intended to request any
14 recovery for personal injury and claims related thereto. Plaintiff reserves the
15 right to expand the Class definition to seek recovery on behalf of additional
16 persons as warranted as facts are learned in further investigation and
17 discovery.

18 30. The joinder of the Class members is impractical and the disposition of their
19 claims in the Class action will provide substantial benefits both to the parties
20 and to the court. The Class can be identified through Defendant's records or
21 Defendant's agent's records.

22 31. There is a well-defined community of interest in the questions of law and
23 fact involved affecting the parties to be represented. The questions of law
24 and fact to the Class predominate over questions which may affect
25 individual Class members, including the following:

- 26 1. Whether, within the four years prior to the filing of the Complaint,
27 Defendant made any call/s (other than a call made for emergency
28 purposes or made with the prior express consent of the called party)

1 to Class members using any automatic telephone dialing system or
2 an artificial or prerecorded voice to any telephone number assigned
3 to a cellular telephone service.

4 2. Whether Plaintiff and the Class members were damaged thereby,
5 and the extent of damages for such violation; and

6 3. Whether Defendant should be enjoined from engaging in such
7 conduct in the future.

8 32. As a person that received numerous calls using an automatic telephone
9 dialing system or an artificial or prerecorded voice, without Plaintiff's prior
10 express consent, Plaintiff is asserting claims that are typical of the Class.
11 Plaintiff will fairly and adequately represent and protect the interests of the
12 Class in that Plaintiffs have no interests antagonistic to any member of the
13 Class.

14 33. Plaintiff and the members of the Class have all suffered irreparable harm as a
15 result of the Defendant's unlawful and wrongful conduct. Absent a class
16 action, the Class will continue to face the potential for irreparable harm. In
17 addition, these violations of law will be allowed to proceed without remedy
18 and Defendant will likely continue such illegal conduct. Because of the size
19 of the individual Class member's claims, few, if any, Class members could
20 afford to seek legal redress for the wrongs complained of herein.

21 34. Plaintiff has retained counsel experienced in handling class action claims and
22 claims involving violations of the Telephone Consumer Protection Act.

23 35. A class action is a superior method for the fair and efficient adjudication of
24 this controversy. Class-wide damages are essential to induce Defendant to
25 comply with federal and California law. The interest of Class members in
26 individually controlling the prosecution of separate claims against Defendant
27 is small because the maximum statutory damages in an individual action for
28 violation of privacy are minimal. Management of these claims is likely to

1 present significantly fewer difficulties than those presented in many class
2 claims.

3 36. Defendant has acted on grounds generally applicable to the Class, thereby
4 making appropriate final injunctive relief and corresponding declaratory
5 relief with respect to the Class as a whole.

6 **FIRST CAUSE OF ACTION**
7 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
8 **47 U.S.C. § 227 *ET SEQ.***

9 37. Plaintiff incorporates by reference all of the above paragraphs of this
10 Complaint as though fully stated herein.

11 38. The foregoing acts and omissions of Defendant constitute numerous and
12 multiple negligent violations of the TCPA, including but not limited to each
13 and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

14 39. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*,
15 Plaintiff and the Class are entitled to an award of \$500.00 in statutory
16 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

17 40. Plaintiff and the Class are also entitled to and seek injunctive relief
18 prohibiting such conduct in the future.

19 **SECOND CAUSE OF ACTION**
20 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
21 **TELEPHONE CONSUMER PROTECTION ACT**
22 **47 U.S.C. § 227 *ET SEQ.***

23 41. Plaintiff incorporates by reference all of the above paragraphs of this
24 Complaint as though fully stated herein.

25 42. The foregoing acts and omissions of Defendant constitute numerous and
26 multiple knowing and/or willful violations of the TCPA, including but not
27 limited to each and every one of the above-cited provisions of 47 U.S.C. §
28 227 *et seq.*

43. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
227 *et seq.*, Plaintiffs and each of the Class are entitled to treble damages, as

provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

44. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully request the Court grant Plaintiff and The Class members the following relief against Defendant:

FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF THE TCPA, 47 U.S.C. § 227 *ET SEQ.*

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION OF THE TCPA, 47 U.S.C. § 227 *ET SEQ.*

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

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TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Respectfully submitted,

Date: April 16, 2014

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
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